MONTANA LEGISLATIVE HISTORY

Chapter 334 19 97

Bill H _____ S 31 Original bill & history X C

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s)	3/6	X C	Hearing Date(s)	1/13	X C
EXEC. ACTION	3/11	X C	EXEC. ACTION	1/16	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

ALSO INCLUDED: 4/2 VETO LETTER & PROPOSED AMENDMENTS

4/18 VETO LETTER

2/06	TRANSMITTED TO GOVERNOR		
2/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 11		
	EFFECTIVE DATE: 02/07/97		

SB 31 INTRODUCED BY JENKINS *LC0307 DRAFTER: MACMASTER*

PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS

12/19	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/13	HEARING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	REREFERRED TO JUDICIARY		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	37	11
1/31	3RD READING PASSED	37	12
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
3/06	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	89	10
3/15	3RD READING CONCURRED	85	13
	RETURNED TO SENATE		
3/20	SIGNED BY PRESIDENT		
3/20	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		
3/31	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/03	REVISED FISCAL NOTE REQUESTED		
4/03	REVISED FISCAL NOTE RECEIVED		
4/07	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	34	15
4/07	REVISED FISCAL NOTE PRINTED		
	HOUSE		
4/08	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	91	9
4/09	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
4/18	VETOED		
4/19	VETO OVERRIDDEN BY SENATE	35	15
4/19	VETO OVERRIDDEN BY HOUSE	78	16
	CHAPTER NUMBER 334		
	EFFECTIVE DATE: 10/01/97		

SB 32 INTRODUCED BY HALLIGAN *LC0367 DRAFTER: STERNBERG*

ALLOW A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED

12/19	INTRODUCED
12/30	FISCAL NOTE REQUESTED
1/03	REFERRED TO JUDICIARY
1/06	FIRST READING
1/09	HEARING
1/09	FISCAL NOTE RECEIVED

SENATE BILL NO. 31

INTRODUCED BY JENKINS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CHEMICAL TREATMENT OR SURGICAL CASTRATION OF CERTAIN SEX OFFENDERS; AND PROVIDING APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Chemical treatment and surgical castration of sex offenders.** (1) A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) may, in addition to the sentence imposed under those sections, be sentenced to undergo medroxyprogesterone acetate treatment or its chemical equivalent, administered by the department of corrections or its agent pursuant to subsection (4).

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 shall, in addition to the sentence imposed under those sections, be sentenced to undergo medroxyprogesterone acetate treatment or its chemical equivalent, administered by the department of corrections or its agent pursuant to subsection (4).

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medroxyprogesterone acetate treatment or its chemical equivalent may voluntarily undergo such treatment or surgical castration, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and, unless the person voluntarily undergoes surgical castration, which must be administered by the department of corrections or its agent and paid for by the department of corrections, must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment or surgical castration under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment or surgical castration under this section.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45 apply to [section 1].

NEW SECTION. **Section 3. Applicability.** [Section 1] applies to offenses committed after [the effective date of this act], except that subsection (3) of [section 1] also applies to offenses committed before [the effective date of this act].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0031, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for chemical treatment or surgical castration of certain sex offenders; and providing applicability dates.

ASSUMPTIONS:

1. Cost per inmate for Depo-Provera treatment is $131 per week for an annual cost of $6,812. Medical monitoring costs of $300 for preliminary clearance and a cost of $50 for each of 3 quarterly monitoring visits would also be incurred. Total annual cost per inmate would be $7,262.
2. This bill will be effective 10/1/97.
3. This bill only applies to offenders committing sexual crimes after 10/1/97 except for those offenders who committed crimes prior to 10/1/97 who may volunteer for this treatment.
4. Any offenders who are sentenced to prison for sexual offenses covered under this bill in fiscal year 1998 or fiscal year 1999 will not be released until after fiscal year 2000. Therefore, there will be no treatment costs for these offenders in fiscal year 1998 or 1999.
5. In fiscal year 1995, there were 67 sex offenders who received only probation sentences. The Department of Corrections (DOC) assumes this number will remain the same for fiscal years 1998 and 1999.
6. Fiscal year 1996 data shows that 9% of sexual offender admissions to Montana State Prison (MSP) were for second sexual offenses.
7. Of the 67 probation admissions assumed for fiscal years 1998 and 1999, 91% will be for first offenses. There will be no effect of this bill on these admissions in fiscal year 1998 because of the time it takes from commission of crime until sentencing.
8. Six offenders or 9% of 67 will be sentenced directly to probation for second offenses in fiscal year 1999. The DOC assumes that all of these offenders will be sentenced to receive this treatment.
9. Of the 67 offenders, 61 will be first time sexual offenders directly admitted to probation in fiscal year 1999. The Bureau of Justice Statistics data shows that 66.8 % of sexual offenses nationally are against victims under the age of 16. This means that 41 first time offenders will be affected by this bill in fiscal year 1999. It is assumed that the sentencing court will sentence 25% of these offenders to the treatment, for a total of 10 offenders.
10. The DOC assumes that 14 sex offenders sentenced after 10/1/97 will volunteer for this treatment in order to get a more lenient sentence. These volunteers will incur treatment costs in both years.

	FY98 # of offenders	FY99 # of offenders
Committed crime after 10/1/97, sentenced only to probation:		
1st offense	0	10
2nd offense	0	6
Sentenced after 10/1/97, volunteer for treatment:	14	28
Total offenders to receive treatment	14	44

(Continued)

Dave Lewis 1-11-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LOREN JENKINS, PRIMARY SPONSOR DATE

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
Expenditures:		
Chemical treatment costs	101,668	319,528
Funding:		
General Fund (01)	101,668	319,528

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The cost of this bill in future years will increase linearly as the treatment costs will continue until the DOC deems the treatment is no longer necessary or the offender dies. Without historical data as to the effectiveness of this treatment, the DOC is unable to predict the average length of treatment time per offender. In fiscal year 0010, the cost of this bill based on current data (without any inflation factor for the cost of treatment) could be as much as $3,834,336.

The department is unable to estimate the potential impact on prison population as a result of offenders being subject to sentence enhancement (additional sentences 10-100 years) due to their failure to comply with this treatment and subsequent conviction for contempt and/or parole revocation.

The department is also unable to estimate the potential impact on prison population as a result of a recidivism rate reduction due to forced or voluntary treatment.

The department is not able to estimate the potential fiscal liability for administration of or the failure to administer this treatment.

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 13, 1997, at 10:00 a.m., in the Senate Judiciary Chambers, Room 325, of the State Capitol.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 54, SB 31, posted January 6, 1997

Executive Action: None

HEARING ON SB 54

Sponsor: **SENATOR DEBBIE SHEA, SD 18, Butte/Silver Bow.**

Proponents:
Gene Kiser, Administrator, Montana Board of Crime Control
Beth Baker, Department of Justice
John Connor, Prosecutor, Office of the Attorney General
Matthew Dale, Executive Director, Friendship Center, Helena.
Betty Waddell, Montana Association of Churches.

Beth Baker. When a victim recovers fully, then the Program is compensated. I am willing to amend this language so that the victim would be fully compensated first.

SENATOR SUE BARTLETT. Are recoveries from any third party payor limited to that amount? **Beth Baker.** Yes.

SENATOR BARTLETT. Mr. Dale, would you comment on Ms. Sweeney's statement to the Committee? **Matthew Dale.** What Nancy Sweeney said is correct. Simplicity is better with respect to orders of protection without fees. I believe the bill is a better way.

SENATOR DOHERTY. The medical lien statute requires anyone who gets money for an injury to pay off their medical costs first. Does a medical lien have priority? Are lost wages subject to the medical lien law? **Gene Kiser.** We presently leave it up to the victim to decide whether they want lost wages compensation ahead of paying off their medical costs. They overwhelmingly opt for lost wage compensation first. Recently, we had our first medical lien field against the program.

SENATOR DOHERTY. I believe we will see more medical liens, so ought we to say the money ought to go to the victim first? There was no response.

CHAIRMAN CRIPPEN. I am asking that **SENATOR SHEA** work on these proposed amendments to keep the bill moving along. Can the Lewis and Clark County Clerk of Court give an estimate of the number of collection fees for now? **Nancy Sweeney.** I believe there will be an increase. It costs $1 to open each file, plus related costs.

CHAIRMAN CRIPPEN. I am asking that you give your suggestions to **SENATOR SHEA.**

Closing by Sponsor: **SENATOR SHEA.** I ask that the Committee support SB 54.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None.}

HEARING ON SB 31

Sponsor: **SENATOR LOREN JENKINS, SD 45, Big Sandy.**

Opponents: **Arlette Randash, Eagle Forum.**
Sharon Hoy, Montana Catholic Conference.
Scott Crichton, ACLU of Montana.

Opening Statement by Sponsor: **SENATOR LOREN JENKINS, SD, 45, Big Sandy.** I received a letter from a sex offender last summer, concerning what he would like to see enacted into law **(EXHIBIT #6)**. Gender, race, occupation, economics make no difference in sex offenders. No one is safe from sex offenders, from babies to the elderly. I don't know if it's a sickness, but is a most heinous crime.

Section 1 of the bill deals with first offenses against someone under age sixteen, with bodily injury, physical force, incest, and can require MPA treatment (depoprovera or its chemical equivalent).

Section 2 pertains to sexual assault against someone under sixteen, rape, incest, and second offenses. Chemical treatment, administered by the Department of Corrections is mandatory.

Section 3 pertains to voluntary treatment, administered by the Department, if the perpetrator is not sentenced to treatment. The offender must be fully informed of the effects of treatment.

If an offender violates a treatment order, he or she may be sentenced to not less than ten years or more than one-hundred years in prison.

The bill would become effective in October, 1997. California has passed this without the contempt of court provision.

Repeat offenders are as high as 70 percent. Studies in Denmark show that chemical treatment can drop repeat offenses to as low as 2.2 percent.

Proponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: #8.6; Comments: None.}

Opponents' Testimony: **Arlette Randash, Eagle Forum.** Read from prepared testimony **(EXHIBIT #7)**. Eagle Forum supports **SENATOR JENKINS'** desire to protect children, but is against the method. MPA must be used as part of a comprehensive treatment program, and the offender must want to participate. We are concerned with the bioethical implications of the bill.

Forty-five percent of child sex abuse is perpetrated by children and teens, presenting the need for early identification and correction. There is a need for a carefully designed program in which chemicals may be, but are not arbitrarily required. I believe Montana would pay a high price in medical malpractice if this bill were to pass in its present form.

Is MPA a treatment or a punishment? I see a need for a signed, informed consent. The bill diverts resources from a science-driven program to a politically-driven program.

{Tape: 1; Side: B; Approx. Time Count: #18; Comments: None.}

Sharon Hoy, Montana Catholic Conference. Read from prepared testimony **(EXHIBIT #8)**. Treatment is critical, but castration doesn't always stop offenders. It can give society a false sense of security.

Scott Crichton, ACLU of Montana. (EXHIBIT #9). This bill may violate Article Eight of the U.S. Constitution; therefore, I urge you to vote no.

Questions From Committee Members and Responses: **SENATOR SHARON ESTRADA.** After injections are stopped does the person return to normal? **SENATOR JENKINS.** Yes, but there are no U.S. tests in this area, beyond eight years.

SENATOR ESTRADA. What is the cost of the injections? **Sandy Heaton, Montana State Prison.** The cost is $7000 per injection per prisoner per year, plus $300 for the original exam, and $50 per quarter for follow-up exams. This doesn't include the costs of probation and parole, related sex offender treatment.

SENATOR BARTLETT. What is the motivation for most sex offenders to accept treatment, considering the costs and the medical side-effects? **Sally Johnson, Administrator of Professional Services, Department of Corrections.** The effects of Depoprovera are temporary and must be repeated weekly by a license professional. Supervision and monitoring are required in mandatory offender treatment. Compliance is crucial, and should be voluntary to work best.

Depoprovera reduces sex drive, and does have side-effects. John Hopkins, the University of Colorado, and Texas have researched chemical treatment of sex offenders. They are succinct in their medical exclusions of diabetes, glaucoma, drug use, depression, anti-social personality disorder, cardiac and liver disease, migraine, and alcoholism.

Cost of the program is estimated to be more than $101,000 in FY 1997, and about $319,528 by FY 99.

Sandy Heaton, Director, Sex Offender Program, Montana State Prison. Chemical therapy is very appropriate for some offenders, but doesn't work for all of them. The primary motivators of offenders are anger, power and control.

If an offender decides to offend, he can do so while on Depoprovera. Injections are least effective with offenders who don't want to be on them.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: None.}

CHAIRMAN CRIPPEN. Is Depoprovera available now? **Sandy Heaton.** Yes. One private practitioner is using it on several offenders now.

SENATOR DOHERTY. If an individual opts for an alternative, will it affect the length of their sentence in any way? **SENATOR JENKINS.** Upon release an offender will still need sex therapy. This is quite often mandated by the courts.

SENATOR DOHERTY. Since a large number of offenders are kids, would this sentence reduction be available to them as well as to adults? **SENATOR JENKINS.** This is not covered in the bill. The bill only makes treatment mandatory for second offenses.

SENATOR DOHERTY. If this is a good idea for public policy, why are you only addressing victims under age sixteen? **SENATOR JENKINS.** Molesting laws apply to under sixteen. Second offense covers all offenders.

SENATOR ESTRADA. Can you give more Depoprovera, if the injections don't appear to be working? **Norma Jean Boles, Department of Corrections.** 400 mg are generally recommended. Some offenders have been given up to 600 mg per day in studies.

SENATOR ESTRADA. Do injections affect males and females identically? **Norma Jean Boles.** The dosage is much less for women.

Closing by Sponsor: **SENATOR JENKINS.** Depoprovera has been available since the 1960s, and has been used in other countries, as well as the U.S., experimentally. I believe there needs to be a punishment if an offender goes off treatment. Offenders also need therapy in prison, as well as after their release.

According to U.S. Attorney General, Janet Reno, repeat offenses against those age sixteen and under are about 75 percent. I have 6 grandchildren, the oldest of which is 9. I see a charge to make Montana safer, especially since offenders are picked up only about 1 out of 8 times.

(EXHIBITS #10-18) informational data.

CHAIRMAN CRIPPEN. The Committee will go into executive session on SB 2 tomorrow.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 1-13-97 ATT # 6
BILL NO. SB-31

Jan 13, 1997

Dear Senator, Cuppen.

Im writing with a little follow up on the letter and outline of suggestions reguarding sex offenders treatment I sent you in sept. of this year, I see in the Paper where there is legestation Pending on this subject Coming up. I hope you will Concider supporting this bill for the Chemicial or Surgicial Casturation, I have read about a study done by John Hopkins university in Baltimore in 1991, they treated 626 offenders with the Chemical Castration after 5 years fewer than 10% had reoffended, In Europe where they have used this treatment much longer they report around 2% reoffend rate that doesn't compare with the reoffending rate of 75% reported by attorney Genral Janet Reno, this treatment isn't a "Cure all" But a very effictive tool for those of us who truely want to stop this behaviorey if this is Passed I hope it can be made available to those already in Prison or jails for these Typer of Crimes, most of all I feel it would mean fewer Victims that's the ultimate goal., also there is to be more Prison space made available hopefully there can be a seperate facility that could be used for sex offenders. you Can't get safe effective help in Prison, I've been there, I know a facility away from Prison that Could be totally Commited to the rehabilition of sex offenders, the way it is now many myself included feel like we are just being Victimized again as we where Victimized as Children too, a seperate facility would Cut down on the Violence in Prison, fewer law suits, etc. if sex offenders were Completely seperated, also after the good time is taken off in Jan. 31-97 there well be much more trouble in Prison. there will be many more in there with nothing to lose, will Close Come Visit with me and several others who know both sides of this subject I'd really like to talk with you or your Collegeiles on this. Please Come down and see me thank you for your time.

P.S. I can Call Collect from here too.

Sincerely

Ernest Coleman

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7-13-97
DATE 1-13-97
BILL NO. SB 31

Testimony / SB 31
January 13, 1997

Mr. Chairmen, members of the Committee, for the record my name is Arlette Randash, representing Eagle Forum, a pro-life / pro-family, and constitutional issues advocacy group. We rise in opposition to SB 31 but in support of Senator Jenkins effort to protect children and society from sexual offenders. Our opposition arises out of two areas of concern: as written, we question if this bill will provide the remedy sex offenders and correction's personnel are seeking. Secondly, we oppose the bill because of its bioethical implications.

Will this bill as written achieve its purpose? Trends in law and public policy are often fads not founded on scientific evidence. When California passed this bill last year it was reported that European countries using chemical castration had seen their recidivism rate drop to 2%. However, Baylor College of Medicine psychologist Dr. Michael Cox, who treats sex offenders, said those statistics were eschewed because the inmates involved **wanted** to stop abusing children. I personally called three professionals specializing in sex offenses around the country and studied the works of two others available at the state law library. **MPA injections are a valid means of treatment when inmates *intensely desire* to change**. When they do not, it provides little remedy and is tax money wasted. One professional told me sex offenders are the most resistant of all criminals to treatment and change. ***MPA injections may lower sex drive; however it doesn't address the criminal mind that gets a perverse satisfaction, an adrenalin rush, from exerting power and control over a victim. It must be used as a component in a comprehensive treatment plan for a specific offender that addresses those issues.***

All the professional basically concurred that the following components were necessary for successful and ethical anti-androgen therapy, or if you will "chemical castration." It is prescribed when "(A) other treatment alternatives are not appropriate, (B) when prescribed by a physician after sex-offender specific evaluation, (C) when it is part of a comprehensive treatment plan, (D) when informed consent can be obtained from the individual." One professional did state that indeed countries applying comprehensive sex offender treatment programs are achieving a 2-3 % recidivism rate. I will give you the names of each person I called and the books I consulted in the law library. Incidentally, these individuals are willing to share their professional insights and findings with our correction personnel.

The Montana Board of Crime Control has not compiled data profiling repeat sex offenders, let alone repeat offenders of children. **However, in Vermont, it is substantiated that 45% of child sexual abuse is perpetrated by children and teens. If Montana, upon compiling the data were to find that indeed young children were committing a substantial amount of the sexual abuse of our children, are we prepared to arbitrarily chemically castrate children or permit the voluntarily surgical castration of a single 15 year old boy?** Those working in sex crime prevention in Vermont have concluded that early identification and intervention with these child sex offenders would reduce, almost by half, the number of children sexually abused. I submit we are not prepared to pass this bill. We need to compile the data and permit the corrections system to carefully design a comprehensive treatment program which may indeed include chemical treatments but which is not arbitrarily applied.

Further considerations: If passed the "shall" of line 13, Section 2 would arbitrarily require the sex offender be administered the drug even if his specific psychological evaluation indicated other treatment was more qualified to provide remedy, or his individual medical history precluded its safe prescription. In the litigious climate in which we exist, Montana would pay a high price in medical

malpractice settlements.

Furthermore does Section 1 clarify if the sentencing of a sex offender to undergo MPA injections is undertaken as a *treatment* or a *punishment?* If it can be imposed by a judge during the sentencing of a *first* conviction, has the inmate undergone a careful and studied diagnosis in which MPA is used as a component? Whether this is a treatment or a punishment could have serious implications under later legal scrutiny.

Isn't the lack of a *signed* informed consent a serious oversight in SB 31? Informed consent is a crucial component in all medical procedures. The right to refuse treatment is further complicated when an individual is incarcerated because there is inherent coercion in an institutional setting. We should be cautioned that the greater the degree of intrusiveness, the greater the necessity and desirability of consent. Furthermore, isn't it standard practice that mental patients who do not consent to forced medication are entitled to an administrative hearing made up of committee members who are not involved in the patients treatment? Isn't it legally imperative Montana provide a similar avenue for sex offenders undergoing arbitrary MPA injections?

Obtaining a signed informed consent is particularly important when there are adverse side effects to a medication and **anti-androgens can cause serious side effects for patients with diabetes, obesity, or pulmonary diseases**. Arbitrarily sentencing patients to undergo medical treatment could not only lead to serious medical complications but, once again medical malpractice suits further, diverting precious corrections resources from developing a science-driven rather than a political-driven comprehensive sex offender treatment program.

However, our primary concern arises from the bioethical implications of the bill. Section 1, Subsection 3 would legalize the *voluntary* surgical castration of prisoners. Recent history demonstrates the shifting ground of both public acceptance and legal standing of bioethical issues. "Voluntary" today is "mandated" tomorrow. There are boundaries protecting human dignity which should never be violated, and had slowly gained standing in jurisprudence. In fact, a fundamental reason people organize governments of law and order is to protect that human dignity. Human life, the inviolability of the human body, and ability to transmit life, are sacred gifts from God. Neither the state nor a person are free to violate them, voluntarily or arbitrarily. When violated grave consequences result. This past week, the Supreme Court heard oral arguments regarding physician assisted suicide remind each of us of the bioethical quick sand onto which our nation has moved since we have permitted the legal destruction of our unborn. We permit human embryo experimentation, and only this November the FDA relaxed regulations prohibiting medical experiments on non-consenting patients. Next session might we debate the efficacy of inserting Norplant in young women bearing their second child out of wedlock; and the following session debate sterilizing them, or the men who impregnated them? Dr. Leo Alexander, expert interrogator at the Nuremberg trials, said, "whatever proportions the Third Reich crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings."

We urge you to oppose SB 31. Our children, sex offenders seeking remedy to a horrifying pathology, and our society deserve a more carefully crafted corrections policy. Having visited with Senator Jenkins, I know he desires the same. We should take the time to engage in a non-politicized, fact driven assessment of our sex offender treatment program that will rehabilitate those sex offenders who genuinely want to change. Those who do not want to change should be incarcerated.

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She coauthored with Henry Cellini, the book: <u>The Sex Offender: Corrections, Treatment, and Legal Practice</u> available in our law library. She called me Friday evening. During our chat she said Prozac appears to work even better than MPA. She also recommended the work of Fred Lemon in Bozeman. She said the following states have excellent sex offender treatment programs: Vermont, Minnesota, Wisconsin, Washington, Kansas, Alaska, Hawaii, and Massachusetts (which she developed.) She said excellent programs for child sex offenders are located in Massachusetts, Virginia (called Pines under a John Hunter), Minnesota, Florida, and a group called "Brown's Schools." She said Kansas and Alaska have recently cut their recidivism by 20%.

In her book, mentioned above, she reports the following efficacy studies: from page 18-3

Cooper (1986) Study concluded "these drugs were reasonably effective in suppressing sexual desire and arousal in men. The best results were in self-referred, non-recidivist, hypersexual males with good social support systems."

"Meyer (1992) compared 40 men aged 16 to 78 years old who took MPA for between 6 months and 12 years with a control group of 21 men who refused MPA and were treated with psychotherapy instead. The control group consisted of men with similar types of offending behavior. Of subjects prescribed MPA, 18% reoffended, while on medication and 35% re-offended after stopping it. The authors conclude MPA is useful in decreasing offending sexual behavior in carefully selected, motivated, and well informed men."

Emory (1992) "should be used in carefully selected patients."

Author concluded: "Because of the small number of studies done, the conflicting results that have been found, and methodological limitations, psychiatrists should be cautious in using these drugs with sex offenders. In addition, patients should only receive medication after appropriate informed consent is obtained and documented." page 18-6.

Another book at the law library was: <u>Inside the Criminal Mind</u> by Stanton Samenow a consultant to President Reagan's Task Force on Victims of Crime

National Criminal Justice Referal Service
1-800-851-3420

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 1-13-97
BILL NO. SB 31

Montana Catholic Conference

Senate Bill 31 - January 13, 1997 - Senate Judiciary Committee

Chairman Crippen, members of the committee, for the record, my name is ~~Cory Laird~~ Sharon Hoy. I am submitting testimony in opposition to SB 31 on behalf of the Montana Catholic Conference.

While we can understand society's desire to insure public safety, we believe there are numerous ethical and moral considerations regarding SB 31.

Chemical castration in the form of Depo-Provera, or its chemical equivalent, has significant health side effects which need to be thoroughly researched with knowledgeable physicians. Mandating chemical castration ~~without the informed consent of the patient~~, and without also mandating patient assessment, accompanying therapy or provision for discontinuance in the event of severe side effects, raises grave medical and ethical concerns. Using medical science to punish does not insure protection for potential victims.

Chemical castration does not eliminate re-offense risks. Numerous fallacies are associated with the belief that castration stops sexual offending. I have copies of a 1995 Psychiatric Times article regarding the various fallacies associated with castration for your reference. Sex offenders are not necessarily motivated by sexual desire. Many are motivated by anger, and the need for power and control. Castration will not address the various causes associated with sexual offense.

For the Catholic Church, protecting the life and dignity of the human person is primary. We are for victims and victims rights, but believe treatment of sex offenders is

critical. This legislation will not help victims; it will not cure sex offenders, but it is likely to give society a false sense of security. We urge a do-not-pass for SB-31. Thank you.

Rapists and Castration Revisited

Psychiatric Times

by Domeena C. Renshaw, M.D.

The suggestion to castrate rapists as an alternative to imprisonment has periodically resurfaced since 1905. Now, a measure called the Child Protection Act (CS for SB 170) is making its way through the Florida state legislature, which the Committee on Criminal Justice, Sen. Robert Wexler (D-Boca Raton) and others have approved and forwarded on to the Senate Ways and Means Committee for discussion. The bill would impose chemical castration by injection of medroxyprogesterone (Depo-Provera) or its chemical equivalent on those convicted of sexual battery, and provides that "the court may sentence a defendant to undergo pharmacological treatment for a specific term of years, or for the life of the defendant" if the defendant is found to be "an appropriate candidate for pharmacological treatment."

That is in the spirit of the "three-strikes-and-you're-out" approach to crime. One report said one out of six, or 9,000 rapists, were held in Florida prisons.

Many misconceptions about rapists exist. There are tangled possible consequences of either surgical or chemical castration and some ethical questions. Some prevalent fallacies are outlined.

Fallacy 1: Rapists are a homogenous group. Actually, there are several categories of rapists. For example, some rapists attack only children or only elderly women; others, only men. Some are mentally retarded or psychotic; others are rape-murderers (serial killers) who predictably repeat the crime. Other types of rapists include: teen rapists; anger-impulsive/power/sadistic rapists; gang rapists; "true" rapists (sex only); and date rapists. Some use alcohol, drugs or both. The great majority of rapists who rarely are imprisoned because of nonreporting are men accused of date rape. These are everyday citizens who cross another's bodily boundaries for whatever reason. Due to shame, self-blame, the long legal battle, many women prefer to endure its effects in silence.

Fallacy 2: Surgical removal of the testes prevents rape and causes permanent impotence. In 1988 a study from Prague, Czechoslovakia, reported two rape-murders by a 21-year postcastration rapist. A 1981 study from West Germany reported that 11 out of 39 (28 percent) 46- to 59-year-olds were able to have erections adequate for intercourse after surgical castration. The adrenal gland may compensate with testosterone production. Remember that replacement testosterone injections can be obtained legally and on the street.

Fallacy 3: Surgeons would gladly do the castration. Judges may be surprised how highly inaccurate this statement is.

Fallacy 4: A man in prison can give consent for voluntary surgical/chemical castration. Actually, the incentive to leave prison clouds the validity of legal consent.

Fallacy 5: Chemical castration (injections of Depo-Provera every 10 to 14 days or lupron-gonadotropin, monthly) will be totally effective and easy to enforce since homing devices can trace the released rapist's whereabouts if he does not show up as scheduled. This is truly wishful thinking. Follow-up is expensive, labor-intensive and difficult. Who will monitor? The prison system is not ready to do out-of-prison follow-up. Social services are overburdened, comprising predominantly women workers who are fearful of contact with convicted rapists. Within a month or two of quitting medication, there will be a return to baseline testosterone for the rapist. Effectiveness of anti-testosterone as an "antirape" agent is still unsatisfactorily proven and controversial.

Fallacy 6: Rape is a "disease" analogous to tuberculosis. Rape is criminal behavior committed by a variety of men (very rarely by a woman). The question can be asked: Is castration treatment or punishment? If society sees it as a money-saving expedient to call rape a mental illness, thousands of various types of rapists will be evacuated from prisons. Where will they then line up for outpatient Depo-Provera or lupron shots?

Fallacy 7: There is definitive proof that lowered testosterone will eliminate the urge to rape. There is only controversy. Scandinavian and European studies are loosely quoted as reducing their rapist recidivism from 70 percent to 3 percent. However, the follow-up is six months only and the quoted studies (1970s) cluster rapists with others such as voyeurs and exhibitionists. There are as yet no convincing scientific studies.

Fallacy 8: Every convicted rapist is guilty. A few are not. Will they be castrated too?

In response to current media and legal efforts to promote rapist castration, physicians and psychiatrists, please stand back, think this issue through, debate it, educate our legislators and the public. Be aware there are already several petitions from imprisoned rapists volunteering for Depo-Provera or surgery to get out. Remember that rape killers kill again and again. We have as yet no scientific or ethical basis to climb onto this particular bandwagon.

Dr. Renshaw is director of the Loyola Sexual Dysfunction Clinic and professor and vice chairperson, department of psychiatry at Loyola Stritch School of Medicine. □

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STATE ADMIN COMM
EXHIBIT NO. 9
DATE 1-13-97
BILL NO. SB 31

January 13, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the ACLU of Montana. I acknowledge the concerns we all have concerning sex offenses. However well intentioned this bill, I stand in opposition to SB 31 for a number of reasons.

Dealing with sex offenders is not easy, nor is it simplistic, either from a correctional standpoint or from a psychological or therapeutic standpoint. There are a number of complex factors at play- power, control, old patterns of thinking, that contribute to someone being a sexual offender. Castration, whether chemical or surgical, eliminates just one factor. It is a simple fix that offers no guarantee against re-offending.

It would seem to me that if this were a sound proposal from a therapeutic standpoint, that we would see the Montana Sex Offender Treatment Specialists up here in droves supporting this measure. I'd expect to see volumes of clinical support from the national organization of professionals in that field.

It seems to me that mandated castration would likely rise to the level of inflicting cruel and unusual punishment, a violation of the 8th Amendment of the U.S. Constitution, and other protected rights to privacy, maintaining bodily integrity and being fully informed about medical treatment.

Passage of this bill would once again portray to the nation that it is not just our weather that is extreme. I urge you to vote no on SB 31/

1-13-97
SB 31

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-401, enacted as sec. 7 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.
Limitation on deferral or suspension of sentence, 46-18-201.

Part 5
Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.
Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against himself or another; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991.

Cross-References

Definition of "mentally defective", 45-2-101.
Definition of "mentally incapacitated", 45-2-101.
Definition of "physically helpless", 45-2-101.
Definition of "sexual contact", 45-2-101.
Definition of "sexual intercourse", 45-2-101.
Consent as a defense, 45-2-211.
Sexual intercourse without consent, 45-5-503.
Deviate sexual conduct, 45-5-505.
Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

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BILL NO. SB 31

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991; amd. Sec. 1, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and near end, after "more than", substituted "100" for "20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.
Victim less than 16 years old — extension of statute of limitations, 45-1-205.
Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "sexual contact", 45-2-101.
Sexual abuse of children, 45-5-625.

45-5-503. *(Temporary)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result

from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

45-5-503. *(Effective July 1, 1997)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

History: **En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995.**

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in (2), near end, in (3)(a), near end, and in (3)(b), near end, inserted reference to 46-18-219.

Chapter 550 in (2), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "20"; in (3)(a), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "less than" substituted "4" for "2", and after "more than" substituted "100" for "40" and deleted second sentence that read: "An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission"; in (3)(b), near middle, substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "40"; inserted (5) defining in the course of committing sexual intercourse without consent; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-503, enacted as sec. 8 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $10,000.

History: **En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 4, Ch. 687, L. 1991; amd. Sec. 3, Ch. 550, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 550 in (2)(c), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "fined an amount not to exceed $10,000 or be imprisoned" and after "term of not" substituted "less than 5 years or more than 100 years and may be fined not more than $10,000" for "more than 5 years, or both"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 175, L. 1991; amd. Sec. 7, Ch. 687, L. 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "without consent", 45-5-501, 45-5-511.

Sexual abuse of children, 45-5-625.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985; amd. Sec. 1, Ch. 174, L. 1989; amd. Sec. 5, Ch. 687, L. 1991; amd. Sec. 4, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "exceed" substituted "100" for "20", and at end deleted "or both"; in (4), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "prison for" substituted "a term of not less than 4 years or more than 100" for "any term not to exceed 20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "cohabit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Part 6
Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

1-13-97

EXHIBIT NO. 11

DATE 1-13-97

BILL NO. SB 31

DEPARTMENT OF CORRECTIONS

MARC RACICOT, GOVERNOR

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TESTIMONY FOR SENATE BILL 31

While the Department applauds the concern for public safety and the desire to protect victims of criminal sexual acts, certain facts regarding the use of Depo-Provera need consideration.

1 The effects of Depo-Provera are temporary i.e. reduced sexual appitite can only be ensured for one week. Therefore, an intramuscular injection must be administered weekly. An effective program requires much monitoring , supervision and sex-offender treatment, if the goal of protection and public safety is to be achieved.

2. Given the temporary effect, compliance is crucial. The offender must be a voluntary participant in the sense of desiring needed treatment to ensure the level of compliance to promote public safety. Research indicates effectiveness is also contingent upon an on-going sexual offender treatment program.

3. Depo-Provera is not a panacea for all sex offenders, beyond the compliance issue, certain criteria need to be determined and applied. This is within both the medical and clinical realm. My area of expertise is medical and I will limit my comments to this area.

Depo-Provera does not necessarily result in impotence but rather has a sex-drive reducing effect. The intesity of the effect is contingent upon the base-line level of testosterone and the dosage

The reported side effects inlude: weight gain, hypertension (increased blood pressure), fatigue, increased sleep, depressive moods, headaches, polydipsia, polyuria, and visual loss.

The University of Colarado, Depatment of Family Medicine administers the Treatment of Sex Offenders with Anti-Androgens Program. The Department of Family medicine has significant experience in administering Depo-Provera. I have attached their Protocol for treatment to my testimony as a resource for the committee. Of Particular importance is their exclusion criteria as follows:

ABSOLUTE EXCLUSION CRITERIA

1. Significantly abnormal glucose tolerance test or diabetes mellitis
2 Glaucoma
3. Presence of any condition which significantly lowers testosterone levels
4. Psychological or medical conditions which impair behavior controls, such as severe drug abuse, organic brain syndrome, psychosis, severe depression, or antisocial personality disorder.

RELATIVE EXCLUSION CRITERIA

1. Presence of clinically significant abnormality of cardiac, liver, or kidney function.
2. Migraine headaches
3. Current problems with alcohol abuse.

All research recommends a comprehensive medical clearance physical and medical monitoring quarterly, then if stable every six months.

4. The fiscal impact of this bill is significant. In addition to the pharmaceutical and medical monitoring costs , increased staffing and training for local probation and parole offices and the cost of sexual offender treatment need to be taken into account.

Respectfully Submitted,

Norma Jean Boles

Norma Jean Boles, RN, BSN
Health Services Manager

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 1-13-97
BILL NO. SB31

To: Officers and Members of the Montana Senate

We are writing out of concern about the current sex offender sentencing practice and treatment programs available. After much discussion, several of us who have committed sex offenses and have had sex offenses committed on us when we were children, feel the following suggestions would help with the problem of sexual abuse, both against children and adults. To start with, we know that prison doesn't stop this behavior. There is a treatment program in the prison here but people won't take part in them where everyone knows what you have done. A person won't talk about things that could very well get you killed, beaten, your property taken or destroyed, "self preservation comes first," so you lie and deny your crime. You can't get help until you face this thing openly and honestly without fear for your life and well-being. We feel that this is a treatable thing, much like an addiction to a form of behavior.

California has just passed a law for liquid castration, we think this would work very well. It's been done in Europe with great success (only a 2% fail rate). This should be made available to persons in lieu of prison time. It would be far more effective and save a lot of money for the state. I personally would like it done, I asked about it myself several months ago. We read in a newspaper where the current reoffending rate is about 75% with the current help available, this is not acceptable to anyone, the victim, society as a whole or the person offending. This is a terrible waste, of both time and money and worst of all, it means more victims. We saw a program on TV the other day, in Europe where they have the chemical castration in use, their reoffender rate has dropped to around 2% they reported. We need to get something like that here.

Another thing that we think should be considered is lethal injection for those who have little hope of getting out, ie. 50 year olds give 30-40 years. Why put up with prison life for many years then die in there anyway or get out totally dependent on others. Five of us have talked this over many times and we all would rather take the shot than do a bunch of time. We would like to see a poll taken of inmates in Deer Lodge and ask how many would rather take the shot than do the time. You would be surprised at the "yes" answers. Hope you will at least think about some of these things, as you know the "system" as it now doesn't work.

I am looking at 35 years as a second time sex offender. I need safe, effective treatment and/or chemical or surgical castration, or would take lethal injection. I'm sane and 49 years old.

Thanks for your time and consideration of this matter. Please write back or visit with me if you can.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 1-13-97
BILL NO. SB 31

"Thanks for your Letter of Oct. 10.
at this time I know of 2 Senators who are introducing
bills on prison reform & changes in the current "Sex Laws"
Senator Jenkins "Big Sandy", has a proposal to present
to make Ligwid or Surgical castration a option over a long
prison Stay, I hope it gets through, at the it's Not a
"Cure all" it is a proven tool in helping those who sincerely
want to change, to do so, I hope they would make it available
to those already sentenced, I've included a couple of Newspaper
Clipping for you on this subject the copies are very Poor
but we can't get good copies in here also I don't have
a typewriter available either, so we will have to get by
with my chicken scratchings, another thing I feel need
to be changed is the No more "Good time" after Jan. 31. 97 people
sentenced after then won't have any thing to Loose by there
behavior in prison, I been in prison in N. Dakota and Know
the good time is very valuable tool in inmate control, I saw in
a Letter that came into another prisoner in here about a Sex
Last Summer in Deer Lodge, "a sex offender" hung himself with
a little help, there will be a Lot more of that kind of
thing if they take that good time out, I hope you can
Lend your support to something that could help provide
for more effective treatment of sex offenders, if New prisons
are to be built hopefully one could be used for Sex offenders
with a Compatible Treatment program, the complete place could
be setup for Treatment we must reduce the number of
offenders, which will reduce victims, that is the ultimate
Goal, Thanks for your time, If in Billings sometime if you can

Rapists and Castration Revisited

Psychiatric Times
1-13-97
SB 31

by Domeena C. Renshaw, M.D.

The suggestion to castrate rapists as an alternative to imprisonment has periodically resurfaced since 1905. Now, a measure called the Child Protection Act (CS for SB 170) is making its way through the Florida state legislature, which the Committee on Criminal Justice, Sen. Robert Wexler (D-Boca Raton) and others have approved and forwarded on to the Senate Ways and Means Committee for discussion. The bill would impose chemical castration by injection of medroxyprogesterone (Depo-Provera) or its chemical equivalent on those convicted of sexual battery, and provides that "the court may sentence a defendant to undergo pharmacological treatment for a specific term of years, or for the life of the defendant" if the defendant is found to be "an appropriate candidate for pharmacological treatment."

That is in the spirit of the "three-strikes-and-you're-out" approach to crime. One report said one out of six, or 9,000 rapists, were held in Florida prisons.

Many misconceptions about rapists exist. There are tangled possible consequences of either surgical or chemical castration and some ethical questions. Some prevalent fallacies are outlined.

Fallacy 1: Rapists are a homogenous group. Actually, there are several categories of rapists. For example, some rapists attack only children or only elderly women; others, only men. Some are mentally retarded or psychotic; others are rape-murderers (serial killers) who predictably repeat the crime. Other types of rapists include: teen rapists; anger-impulsive/power/sadistic rapists; gang rapists; "true" rapists (sex only); and date rapists. Some use alcohol, drugs or both. The great majority of rapists who rarely are imprisoned because of nonreporting are men accused of date rape. These are everyday citizens who cross another's bodily boundaries for whatever reason. Due to shame, self-blame, the long legal battle, many women prefer to endure its effects in silence.

Fallacy 2: Surgical removal of the testes prevents rape and causes permanent impotence. In 1988 a study from Prague, Czechoslovakia, reported two rape-murders by a 21-year postcastration rapist. A 1981 study from West Germany reported that 11 out of 39 (28 percent) 46- to 59-year-olds were able to have erections adequate for intercourse after surgical castration. The adrenal gland may compensate with testosterone production. Remember that replacement testosterone injections can be obtained legally and on the street.

Fallacy 3: Surgeons would gladly do the castration. Judges may be surprised how highly inaccurate this statement is.

Fallacy 4: A man in prison can give consent for voluntary surgical/chemical castration. Actually, the incentive to leave prison clouds the validity of legal consent.

Fallacy 5: Chemical castration (injections of Depo-Provera every 10 to 14 days or lupron-gonadotropin, monthly) will be totally effective and easy to enforce since homing devices can trace the released rapist's whereabouts if he does not show up as scheduled. This is truly wishful thinking. Follow-up is expensive, labor-intensive and difficult. Who will monitor? The prison system is not ready to do out-of-prison follow-up. Social services are overburdened, comprising predominantly women workers who are fearful of contact with convicted rapists. Within a month or two of quitting medication, there will be a return to baseline testosterone for the rapist. Effectiveness of anti-testosterone as an "antirape" agent is still unsatisfactorily proven and controversial.

Fallacy 6: Rape is a "disease" analogous to tuberculosis. Rape is criminal behavior committed by a variety of men (very rarely by a woman). The question can be asked: Is castration treatment or punishment? If society sees it as a money-saving expedient to call rape a mental illness, thousands of various types of rapists will be evacuated from prisons. Where will they then line up for outpatient Depo-Provera or lupron shots?

Fallacy 7: There is definitive proof that lowered testosterone will eliminate the urge to rape. There is only controversy. Scandinavian and European studies are loosely quoted as reducing their rapist recidivism from 70 percent to 3 percent. However, the follow-up is six months only and the quoted studies (1970s) cluster rapists with others such as voyeurs and exhibitionists. There are as yet no convincing scientific studies.

Fallacy 8: Every convicted rapist is guilty. A few are not. Will they be castrated too?

In response to current media and legal efforts to promote rapist castration, physicians and psychiatrists, please stand back, think this issue through, debate it, educate our legislators and the public. Be aware there are already several petitions from imprisoned rapists volunteering for Depo-Provera or surgery to get out. Remember that rape killers kill again and again. We have as yet no scientific or ethical basis to climb onto this particular bandwagon.

Dr. Renshaw is director of the Loyola Sexual Dysfunction Clinic and professor and vice chairperson, department of psychiatry at Loyola Stritch School of Medicine. ☐

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 1-13-97
BILL NO. SB 31

EXH 15
1-13-97
SB 31

PROTOCOL FOR THE TREATMENT OF SEX OFFENDERS WITH ANTI-ANDROGENS

April 2, 1993

Compounds which lower the levels of androgens, the male sex hormones, have been used for the treatment of male sex offenders since the 1960's (1). The two major members of this class, medroxyprogesterone acetate (MPA, Depo-Provera) and cyproterone acetate (CPA), have been in use in Europe for a number of years; CPA is not approved for prescription in the United States. MPA is approved by the FDA for use in the treatment of medical conditions such as precocious puberty, secondary amenorrhea, endometriosis, functional uterine bleeding, acromegaly, threatened or habitual abortion, and cancer of the breast, prostate, endometrium, or kidney; but not yet for the treatment of sex offenders (2). It is also used as a long-acting (3 months per injection) contraceptive in 70 countries outside the United States, and has recently been approved for such use by the FDA in this country. While private practitioners may use approved drugs for non-approved purposes, FDA rules can be interpreted to require FDA oversight over such use as part of an organized treatment program; under such circumstances, an investigational permit (IND number) from the FDA mat be required in order to establish such a program.

MPA has been used successfully in the treatment of transvestitism, pedophilia, incest, sodomy, fetishism, exhibitionism, and homosexuality (2-7). Although there is no good evidence which links testosterone levels in males to aberrant sexual or criminal behavior, available evidence suggests that the reduction of testosterone levels is causally related to reduction of both sexual and generalized aggressive behavior, while treatment with testosterone can stimulate sexual appetites and behavior (8). A number of possible mechanisms have been suggested to explain the effects of MPA, including a direct calming effect on the brain's limbic and hypothalamic arousal systems (10), direct suppression of the cerebral cortex (2), inhibition of the pituitary secretion of luteinizing hormone (10), inhibition of testosterone's action at central and peripheral receptor sites (2), direct effect on the gonads (11), and effects on testosterone metabolism (12). It has been demonstrated that successful treatment of sexual problems requires reductions of serum testosterone levels to less than 150 ng/100 ml (150 mg%) (13). Normal levels in adult males are in the range of 575 ± 150 ng/100 ml (14).

SIDE EFFECTS

Patients on therapeutic doses of MPA have reported side effects similar to those reported by women using progesterone drugs for contraception: fatigue, weight gain, increased sleep, depressive moods, gynecomastia (enlargement of the breasts), changes in patterns of body hair, decreased sebaceous gland secretion, inhibition of spermatogenesis, headaches, polydipsia, polyuria, and visual loss. Decrease in sexual arousal and in ability to achieve an erection normally accompany the treatment (12, 14); they are not considered significant medical side effects unless they totally prevent the achievement of erection and ejaculation. The significance of the decrease in the ability to achieve erection and ejaculation will be determined in part by the patient's subjective reaction - if the reduction is intolerable to the patient, it will be considered a significant side effect, and the dosage will be lowered or (if necessary) the trial will be discontinued. In studies in which patients have been on MPA for as long as eight years, all side effects have been reversible after cessation of treatment, although some, such as decreased spermatogenesis, may require up to a year to remit fully (1,6,9). There is some suggestion that long-term use of MPA may result in some forms of cancer; but too few male patients have been treated with MPA to date to be able to assess this risk adequately; and, to our knowledge, there are currently no confirmed cancer cases due to MPA which have been reported in the literature. The animal studies also involve animal models which are

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 1-13-97
BILL NO. SB 31

- In Denmark, a study of the sex offenders who have been released on parole and were surgically castrated found that only 4.3 percent of the offenders committed another sex offense.

- Another Danish study, involving 900 castrated offenders followed for periods as long as 30 years, reported a mere 2.2 percent rate of recidivism.

- In a much smaller Danish study of sex offenders who were paroled and given this chemical castration, they found that only one of the offenders committed another sex offense since being put on the chemical treatment.

How does this chemical treatment work?

- The hormones that are given to the parolee, lowers the serum testosterone level of the normal male by inhibiting the release of Luteinizing hormone, which stimulates the testicles to produce the androgens.

- If the Department of Corrections cannot utilize Depo-Provera, the legislation does allow the department to utilize another form of drug.

- The Department estimates that it will cost about $2,380 a year for each parolee given this weekly treatment. There were 244 inmates admitted to state prison in 1995 that could have qualified for this treatment.

This legislation is the latest in a string of bills, Governor Wilson has signed over the past several years which protects the most vulnerable members of society.

- Two years ago the Governor signed the "One Strike" law imposing a 25-year-to-life sentence on child molesters and the most vicious predatory rapists.

- Last year he signed AB 888, which allows the state to civilly commit violent repeat sex offenders who have a diagnosable mental disorder in secure mental institutions, until a clinician determines they are no longer a threat to children or women.

- In 1994, the Governor signed legislation establishing a state-wide telephone system so people can check if a person has a conviction for a sex offense.

- He signed legislation this year that makes it clear that anyone who commits a sex offense against a child under the age of 14 is a "sexually violent" offender. In addition the law prohibits a sex offender from being exempted from registering as a sex offender simply by receiving a rehabilitation certificate.

FROM : 1996.11-20 10:11 #527 P.03/13

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 1-13-97
BILL NO. SB 31

Chemical castration law nears passage

SACRAMENTO, Calif. (AP) — The state that took a hard line on criminals with its "three strikes" legislation is now about to adopt the nation's first law requiring repeat child molesters to undergo chemical castration.

Despite protests from civil libertarians and warnings from therapists that the injections won't curb some molesters' appetites, Gov. Pete Wilson has said he will sign the bill, which requires two-time sex offenders to take the hormone-suppressing drug Depo-Provera upon parole.

HOGE sponsor

Drafted by a victims' rights activist and introduced by Assemblyman Bill Hoge, a Republican from Pasadena, the bill has received near-unanimous votes in both houses of the Legislature. It faces a final vote in the Assembly this week.

Similar legislative efforts are under way in Texas, Massachusetts and Wisconsin.

The weekly drug injections would be optional after a first molestation offense and mandatory after a second crime against a child under 13. Offenders could choose to be surgically castrated instead. Unlike surgical castration, the injections eventually wear off.

The American Civil Liberties Union has already promised a legal challenge.

"This bill poses serious, unresolved legal problems regarding some very fundamental constitutional rights, including the right to privacy, the right to procreate, and the right to exercise control over one's body," the ACLU said.

The injections are seen as a way of fighting what is often a compulsive type of behavior. Attorney General Janet Reno has put the repeat-offender rate among child molesters at as high as 75 percent. Other estimates are even higher.

Backers of the bill cite studies in European countries with chemical castration laws. Hoge said repeat-offender rates among child molesters in Europe have dropped from almost 100 percent to just 2 percent.

But experts who deal with sex criminals have doubts about chemical castration's universal effectiveness.

Sam Jenkins

EX # 18
1-13-97
SB 31

Record, Monday, December 9, 1996

l predator confinement law considered

t to review state rules

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The justices will review a ruling that struck down Kansas' 1994 law as unconstitutional. A decision is expected next year.

Forty-five states and territories have filed documents supporting the Kansas appeal, including five states with sexual predator laws: Arizona, California, Minnesota, Washington and Wisconsin.

HENDRICKS BEGAN exposing himself to girls while he was a young airman at McConnell Air Base in Wichita. He was convicted in 1956 and fined $2.90.

His first prison term came in 1960 in Washington state, where he spent two years behind bars for molesting two boys. In 1963, he was convicted of molesting a 7-year-old boy in Seattle.

After spending time at a state hospital, Hendricks was released in 1965 — and was arrested two years later for taking indecent liberties with an 8-year-old girl and her 11-year-old brother. He served five years in prison.

Hendricks was sent back to prison in 1984 for attempting to molest two 13-year-old boys in a Wichita electronics store where he worked.

When he was released 10 years later, a prosecutor argued that Hendricks was a sexually violent predator and should be locked up.

At his commitment trial, Hendricks himself testified that only his death would guarantee he would never again molest a child.

A jury sent him to the state's mental health facility in Larned, where he is one of nine men declared sexual predators. They can be held there for treatment until doctors decide they no longer pose a threat. Exams are conducted at least once a year.

Then, however, the Kansas Supreme Court said the law violated Hendricks' due-process rights because it allowed him to be committed without proof he is mentally ill.

ATTORNEY GENERAL Carla Stovall immediately appealed to the U.S. Supreme Court, keeping Hendricks confined. She expects the court to question whether Hendricks' alleged mental abnormality merits confinement.

Convicted sexual predator, Leroy Hendricks, 62, at his trial in 1994 in Kansas.

"The key is that the court has never ruled exactly what you have to have for that mental condition," Stovall said. "Mr. Hendricks' 40-year history of abusing children is much more than idiosyncratic behavior."

Stovall contends that Hendricks, who was not treated for sexual deviance during his Kansas prison term, should continue to receive the 30 hours of weekly therapy Larned provides.

"We're spending almost $100,000 per predator at Larned for their care, custody and treatment," she said. "The average tends to be about $20,000 per inmate in the Department of Corrections system, so it's clear we're doing something very, very different for these predators versus the inmates.'

The Kansas law is the first significant attempt to expand the types of people the state can confine.

HENDRICKS' LAWYER, Thomas Weilert of Wichita, said the confinement is an "extension of his criminal sentence" that violates constitutional protections against double jeopardy.

"It's a second prosecution for the same acts that occurred in 1984," Weilert said.

The law was passed largely in response to the 1993 slaying of Stephanie Schmidt, a 19-year-old student at Pittsburg State University. Donald Gideon was convicted; he had been on parole after serving 10 years for raping and sodomizing a woman in 1982.

The Kansas law is the first significant attempt to expand the types of people the state can confine, said Chris Hansen, an attorney for the American Civil Liberties Union in New York.

Traditionally, he said, only people convicted of crimes or found insane can be locked up. The Kansas law creates a third category — people likely to commit crimes based on past behavior.

"THAT HAS VERY strong potential ramifications," Hansen said. "It can be extended beyond pedophiles."

Rose Loux, Hendricks' former stepdaughter, has testified that he molested her for four years starting when she was 9, although he was never charged for it.

Now 33, Mrs. Loux said she hopes the Supreme Court upholds the law because she believes Hendricks will never stop molesting children.

"He will do it again," she said. "It's just a matter of when, and I don't think it will take that long."

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE Jan 13, 1997

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

DATE Jan. 13, '97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 54, SB 31

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Nancy Sweeney	Lewis & Clark Co Clerk of Court	54		X
John Connor	Dept of Justice	54	✓	
Jim Oberhofer	MBCC	54	✓	
Beth Baker	Dept of Justice	54	✓	
Dana Smith	Dept. of Justice	54	✓	
Kathy Matson	" "	54	✓	
Matthew Dale	Friendship Center	"	✓	
Cory Laird	Montana Catholic Conf.	SB 31		X
Beth Waddell	Montana Assoc. of Churches	54	X	
Lee Kissin	MBCC	54	X	
Scott Crichton	ACLU/MT	SB 31		X
Troy McGee	Mt. Assoc Chiefs Police	SB 54	X	
Arlette Randash	Eagle Forum	SB 31		X
Kathy McGowan	MSPOA		X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE Jan 13, 1997

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 54, SB 31

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Russell B Hill	MT Trial Lawyers Assn	SB54		✓
Mary Hoff	MT Catholic Conf	SB31		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

NAME DIANA LEIBINGER

ADDRESS DEPT. OF CORRECTIONS

HOME PHONE 457-0420 WORK PHONE 444-9593

REPRESENTING DEPT. OF CORR.

APPEARING ON WHICH PROPOSAL? SB 31

DO YOU: SUPPORT _____ OPPOSE _____ AMEND ✓

COMMENTS:

Would like to give information

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

NAME Norma Jean Boles

ADDRESS Dept of Corrections

HOME PHONE 442-9156 WORK PHONE 444-4931

REPRESENTING Dept of Corrections

APPEARING ON WHICH PROPOSAL? SB 31

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Would like to PROVIDE INFORMATION on medical aspects.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Sandy Heaton

ADDRESS MT State Prison

HOME PHONE 846-2710 WORK PHONE 846-1320

REPRESENTING Dept of Corrections

APPEARING ON WHICH PROPOSAL? SB 31

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Would like to provide Information about clinical effects of Depo Provera.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME MARY FAY

ADDRESS 1539 - 11 Ave Helena

HOME PHONE 442-9829 WORK PHONE 444-9529

REPRESENTING Dept of Corrections

APPEARING ON WHICH PROPOSAL? SB 31

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Available to give information re: effect of Bill on PROBATION & PAROLE BUREAU

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Sally Johnson

ADDRESS 1539 11th Avenue

HOME PHONE _____ WORK PHONE 444-3900

REPRESENTING Dept of Corrections

APPEARING ON WHICH PROPOSAL? SB 31

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS: Info. only

Would like to provide

info

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 16, 1997, at 9:30 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 46, 01/09/97
SB 141, 01/09/97
Executive Action: SB 141 - DO PASS
SB 54 - DO PASS AS AMENDED
SB 6, SB 48, SB 31

EXECUTIVE ACTION ON SB 6

Discussion: **CHAIRMAN CRIPPEN** stated there was a concern about a fiscal note on SB 6. He did not see where a fiscal note was needed.

Valencia Lane commented that someone questioned the language on page 2, at the top of the page, line 4, and felt that was new language going into law and that it would require a fiscal note. That is an editorial change and the same language is on line 2 at the top of page 2. The editors found that sentence too long and awkward and struck the language at the end of the sentence and put

CHAIRMAN CRIPPEN explained that the fiscal note which the committee had not seen yet, had a large impact.

SEN. HALLIGAN withdrew his motion until the committee had time to review the fiscal note.

EXECUTIVE ACTION ON SB 31

Amendments: SB003101.avl and SB003102.avl

Discussion: **Ms. Lane** explained there were two sets of amendments on SB 31. The longer set was presented to **SEN. HALLIGAN** by the Department of Corrections. **(EXHIBIT 2)** They substantially change the bill. **SEN. LOREN JENKINS** does not approve of these amendments. His amendment, sb003102 **(EXHIBIT 3)**, simply changes one word in his existing bill on second and subsequent offenses making it discretionary with the court and not mandatory.

EXECUTIVE ACTION ON SB 54

Amendments: Baker Amendment **(EXHIBIT 4)** and Doherty Amendment **(EXHIBIT 5)**

Discussion: **Beth Baker, Department of Justice,** commented that the amendments are alternatives. They are not both intended to be adopted. **SEN. STEVE DOHERTY** requested one set. Both amendments deal with wage loss benefits being capped at 26 weeks. The first amendment would make sure that the medical bills are not paid until all wage loss benefits had been paid unless expressly requested otherwise by the victim. The alternative amendments would simply keep the 26 week wage cap but only impose it if the victims total benefits exceed the $25,000 maximum.

Motion: **SEN. SHARON ESTRADA MOVED THE AMENDMENTS PRESENTED BY BETH BAKER.**

Discussion: **SEN. DOHERTY** urged the committee to reject these amendments. This would reflect payments to a victim of crime. He believes that part of the powerlessness that a victim experiences could be helped by his amendment. There would still be a $25,000 cap, but when those individuals are out of work for more than 26 weeks, they ought to have the option to decide how the benefits would be paid.

SEN. ESTRADA withdrew her motion.

Executive Session adjourned and the hearing scheduled for 10:00 a.m. began.)

{Tape: 1; Side: a; Approx. Time Count: 10:00 a.m.; Comments: .}

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1/16/97
BILL NO. SB 31

Amendments to Senate Bill No. 31
'First Reading Copy (white)

For the Committee on Judiciary

Prepared by Valencia Lane
January 15, 1997

1. Title, line 4.
Strike: "PROVIDING FOR"
Insert: "ALLOWING, AT THE TIME OF SENTENCING, CERTAIN SEXUAL OFFENDERS TO VOLUNTARILY CONSENT TO UNDERGO"

2. Title, line 5.
Following: "CASTRATION"
Strike: "OF CERTAIN SEX OFFENDERS"
Following: ";"
Insert: "ALLOWING A JUDGE TO ORDER CHEMICAL TREATMENT OR SURGICAL CASTRATION AS A CONDITION OF PROBATION OR PAROLE IF THE OFFENDER HAS CONSENTED TO SUCH TREATMENT; REQUIRING AN OFFENDER TO ASSUME THE COSTS OF TREATMENT OR SURGERY;"
Following: "PROVIDING"
Insert: "AN"
Following: "APPLICABILITY"
Strike: "DATES"
Insert: "DATE"

3. Page 1, lines 9 through 17.
Following: "**offenders.**" on line 9
Strike: subsections (1) and (2) in their entirety
Renumber: subsequent subsections

4. Page 1, lines 18 through 21.
Following: "(3)"
Insert: "(a)"
Following: "convicted of a" on line 18
Strike: remainder of line 18 through "corrections." on line 21
Insert: "sexual offense, as defined in 46-23-502, and who undergoes a psychosexual evaluation pursuant to 46-18-111 prior to sentencing may agree to undergo medroxyprogesterone acetate (depo-provera) chemical treatment or surgical castration.

(b) The psychosexual evaluator shall include in the psychosexual evaluation an opinion as to whether the offender is an appropriate candidate for the use of chemical treatment or surgical castration.

(c) If the offender consents to chemical treatment, surgical castration, or both, and the offender is determined to be an appropriate candidate for the treatment by the psychosexual evaluator, the person preparing the presentence report shall obtain the knowing, voluntary, and written consent of the offender and include the consent with the presentence report.

(d) The district court may consider the offender's

consent to treatment or surgery when sentencing the offender and may order the offender to undergo chemical treatment or surgical castration as a condition of a probationary sentence or as a condition of parole.

(e) The offender shall assume the cost for the chemical treatment or surgical castration.

(f) Chemical treatment or surgical castration may not be ordered by the court or the board of pardons and parole unless the offender consents at the time of sentencing to the treatment or surgery.

(g) Except as provided in subsection (1)(h), consent to chemical treatment or surgical castration may not be withdrawn following sentencing of the offender.

(h) An offender may be relieved of the condition of probation or parole that the offender undergo chemical treatment if the offender shows the sentencing court, by clear and convincing evidence, that further treatment is not necessary to ensure public safety and that the risk of another offense by the offender is highly unlikely or that further treatment poses a substantial risk of serious harm to the offender."

5. Page 1, line 22.
Following: "(1)"
Strike: "or (2)"

6. Page 1, lines 22 through 28
Following: "confinement" on line 22
Strike: remainder of line 22 through "100 years" on line 28
Insert: "if the offender is sentenced to a term of imprisonment or immediately following sentencing if the offender is not sentenced to a term of imprisonment"

7. Page 1, line 29.
Following: "Prior to"
Insert: "obtaining the consent of an offender to"

8. Page 2, line 5.
Strike: "Title 45, chapter 5, part 5,"
Insert: "Title 46, chapter 18, part 2,"
Strike: "Title 45"
Insert: "Title 46, chapter 18, part 2,"

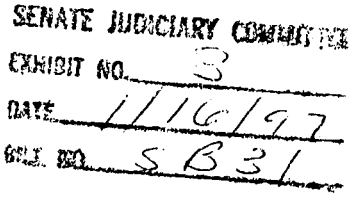
9. Page 2, line 7.
Strike: "[Section 1]"
Insert: "[This act]"

10. Page 2, lines 7 through 9.
Following: "applies to" on line 7
Strike: remainder of line 7 through "before" on line 9
Insert: "offenders sentenced on or after"

Amendments to Senate Bill No. 31
First Reading Copy (white)

Requested by Senator Jenkins
For the Committee on Judiciary

Prepared by Valencia Lane
January 16, 1997



1. Page 1, line 15.
Strike: "shall"
Insert: "may"

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1/16/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 6, 1997, at 8 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:		SB 16, SB 32, SB 33, SB 31 POSTED 2/21/97
	Executive Action:	BE CONCURRED IN: SB 16, SB 32, SB 33 BE CONCURRED IN AS AMENDED: SB 54, SB 212 TABLED: SB 44

HEARING ON SB 16

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 2.0}

Motion: REP. GRIMES moved to amend SB 212 with an immediate effective date.
{Tape: 2; Side: A; Approx. Time Count: 34.3}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 34.5}

Motion/Vote: **REP. GRIMES moved substitute amendment language.** The motion carried 8 - 7; REPS. WYATT, HURDLE, SANDS, MC CULLOCH, PEASE, KOTTEL and ELLINGSON voting no. (REPS. SANDS and HURDLE voted by proxy.)
{Tape: 2; Side: A; Approx. Time Count: 36.0}

Motion: **REP. BOHARSKI moved SB 212 BE CONCURRED IN AS AMENDED.**
{Tape: 2; Side: A; Approx. Time Count: 37.0}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 37.1}

Vote: The motion carried 9 - 8; REPS. WYATT, HURDLE, SANDS, MC CULLOCH, PEASE, KOTTEL, BERGMAN and ELLINGSON voting no. (REPS. SANDS and HURDLE voted by proxy.) **REP. ANDERSON will carry SB 212.** *{Tape: 2; Side: A; Approx. Time Count: 42.7}*

HEARING ON SB 31

Opening Statement by Sponsor: **SEN. LOREN JENKINS** **EXHIBITS 2-6**
{Tape: 2; Side: B; Approx. Time Count: 1.3}

Opponents' Testimony:

CORY LAIRD, Montana Catholic Conference **EXHIBITS 7 and 8**
{Tape: 2; Side: b; Approx. Time Count: 16.3}

Informational Testimony:

SANDY HEATON, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 18.6}

NORMA JEAN BOLES, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 22.2}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 24.5 - 29.2}

Closing by Sponsor: **SEN. JENKINS**
{Tape: 2; Side: B; Approx. Time Count: 29.3}

Motion/Vote: **REP. MC CULLOCH MOVED TO ADJOURN.**

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EXHIBIT 2
DATE 3/6/97
SB 31

The Case for Castration, Part 1

A convicted child molester argues for the only treatment which he believes will prevent him from re-offending

BY LARRY DON MCQUAY

Childrens' nightmares are haunted by demons, some imagined, others real. I'm one of the real ones; I haunt the dreams of scores of children. You'll find me in a Texas prison serving an eight year sentence for molesting a single boy. That's all the court convicted me of, but I have abused close to 200 children.

In the United States, thousands of kids meet monsters like me each year. We prowl your communities, stalking, pouncing when possible, forcing children to endure degrading, violent acts. We wear the innocent-looking masks of a father, step-father, uncle, cousin. We could wear the caring face of a baby-sitter, or a teacher, or a priest. I myself have worn various masks: brother, cousin, step-father, uncle, school-bus driver, family friend. All to molest unsuspecting boys and girls.

Scarcely a week goes by without another disturbing news report about another poor soul victimized by a child rapist. Listen carefully to that next report. Odds are that you'll hear that this same sex offender had a past conviction for molesting at least one other child.

That's because prison is not a deterrent for most sex offenders, and it definitely will not be a deterrent for me. I do not want to return to prison; I would like to be a law abiding citizen. But the threat of being incarcerated for the rest of my life—and the threat of spending, as I believe I will, an eternity in hell—will not stop me from re-offending when I am released.

In fact, in many cases, prison intensifies sex offenders' conditions by making us more savage. Where once we would "playfully" undress a victim, we now roughly strip them. What was once inappropriate touching and "caressing" escalates to a full-scale invasion. What was fondling and masturbation becomes dehumanizing sodomy. What used to be a cultivated "relationship" that took time and preparation becomes an unplanned kidnapping and rape where children are beaten, tor-

Larry Don McQuay is prisoner #547825 in the Coffield Unit Penitentiary in Tennessee Colony, Texas. He is serving an eight year sentence for child molestation.

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tured, ravaged, and often found dead and mutilated, or never found at all. You see, sex offenders who've been to prison not only emerge with an appetite for violence but also learn a lesson about how to stay out of jail: make sure that the next victim can't *ever* report them.

I speak from experience. Lately, many of my dreams and fantasies have become more violent. My sleep is plagued with fantasies of raping kidnapped children in a way that renders them unable to identify me. Without the right treatment, I believe that eventually I will rape, then murder, my victims to keep them from reporting me. That scares me. It should scare you, too.

To reduce these crimes against your children, Texas Governor Ann Richards, for example, advocates more prisons and "harsher" sentences for sex offenders, especially repeat child molesters. Thus she's pushing for more of a solution that does not work, a solution that only means I will take up bed space in one of the many new prisons she is spending millions of dollars on so that later I can commit the same crime. The fact is, prison is nothing more than an oversized, overpriced homeless shelter. Inmates are well fed and clothed and have warm beds to sleep in, all for free. To sex offenders, loss of freedom simply means there are no children available to rape. But we can get child pornography, we can fantasize about the children we watch on television, and we have the memories of our past crimes. Moreover, sex is plentiful in prison. We substitute young-looking partners for children and let our imagination do the rest.

Our victims, meanwhile, retain the searing, ghastly memories of abuse, memories that can last a lifetime. Who is punished more?

According to Texas statutes, as well as those of most other states, child molesters currently in prison can be paroled. But a grotesquely high percentage of all untreated sex offenders rape again. Returning us to prison makes us stop—but getting us back in jail means that another child must first fall prey. The system returns a child molester to prison *after* he is captured by the police, *after* the child-victim has suffered the torture and savagery of being abused, *after* the child-victim has endured a grueling and humiliating interrogation by strangers. Always after, and always too late to save the child. Our justice system, by releasing criminals like me into communities without effective treatment, now dooms countless children to abuse. And most child rapists get away with raping many children, some over and over before being caught.

There is a civilized alternative to this tragic cycle: castrate repeat sex offenders.

Now, some good and decent citizens claim that castration itself is barbaric. What *is* barbaric is what I have done to so many children; refusing to castrate me is barbaric to the children I will molest. *Mandatory* castration of sex offenders, whether for their first, second, or third conviction of a sex offense, is currently a violation of the United States Constitution because it is considered "cruel and unusual punishment." But no punishment is crueler or more unusual than the pain I have caused my victims. *Voluntary* castration is not unconstitutional, but no state allows it.

The governor of Texas, as well as many other state governors, is well aware of the statistics and other information regarding castration, but she turns a deaf ear to my pleas. In doing so, she turns a deaf ear to the children who are my future victims. Criminals who want to be rehabilitated are rare, so it is inconceivable to me that those who volunteer to be castrated are denied this treatment.

I do not write as a scared or worried parent. I have—thankfully—no children at all. I am scared for your children. When they have nightmares, let them be about the ghouls they see in horror movies or on the Saturday morning cartoons. They shouldn't have to have nightmares about me.

My next parole date is June 1995. □

The Case for Castration, Part 2

An expert in the treatment of sexual offenders explains why Mr. McQuay could be right

BY DR. FRED S. BERLIN

Larry Don McQuay was once a child himself. From the innocence of youth, no doubt filled with the promise of life, he became an uncle, step-father, school bus driver, and child molester. A self-proclaimed monster who haunts the nightmares of children, fearful himself of spending eternity in hell, who is Mr. McQuay and what should we do with him?

To be sure, even the mention of castration has an ugly, jarring sound to it; it is an idea that polite people naturally shrink from. But as Mr. McQuay's own words show, there is a terrible problem out there and the ways we are currently trying to solve it aren't working. So if castration, in any form and even in combination with other measures such as counseling, strikes you as the wrong solution, keep thinking about the problem, because everyone can agree that putting people like Mr. McQuay back on the streets is crazy.

Let's be clear about the stakes here. According to the U.S. Department of Health and Human Services, approximately two out of every 1,000 children have been sexually abused, a figure that totaled 138,000 youngsters nationally in 1986. A significant percentage of this figure likely reflects the prevalence of pedophilia in a given community. Because of the driven nature of the disorder, an individual pedophile may make contact with 2 or 3 different children per week, some of the children sometimes being teenaged prostitutes. This can add up to hundreds of youngsters over a period of several years. Most pedophiles are physically nonviolent.

Let's also be clear about castration. Many people believe that castrating a sex offender is like cutting off the hand of the crook. Not so. Cutting off the penis would be like cutting off the hand of the crook, but that is not what castration is. Surgical castration involves removal of the testes only. When the penis is removed but the testes are still left intact, a man will still try to have sex. If the testes are removed, but the penis left intact, a man is far less likely to attempt to engage in sexual behavior. Removal of the testes generally de-

Dr. Fred S. Berlin, an associate professor at the Johns Hopkins University School of Medicine, is director of the National Institute for the Study, Prevention and Treatment of Sexual Trauma.

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creases the *desire* for sexual activity, rather than affecting the capacity to perform.

The testes are the major source of testosterone production in males. It is the marked elevation in testosterone in males at the time of puberty that is associated with a marked increase in sexual desire and interest. Lowering testosterone can reduce the intensity of sexual desire.

A man can will his right arm to move. He cannot will an erection. He can get an erection by thinking certain thoughts. Tragically, for him and for the rest of us, Mr. McQuay apparently discovered that thoughts and cravings about children are what arouse him. To be afflicted with such a condition can itself be a nightmare. It is a condition that cannot be willed, legislated, or punished away. Reported rates of recidivism in the scientific literature for pedophiles not receiving treatment have varied considerably. It's difficult to know whether a given pedophile has not re-offended or simply re-offended and not been caught. Recidivism rates could, however, be as high as 65 percent. This figure makes intuitive sense: If one goes to prison because of a sexual attraction to 10-year-old boys, there is nothing about being in prison that will erase that attraction.

The good news is that lowering testosterone levels works. One Danish study reported a 4.3 percent recidivism rate over a period of up to 18 years among 117 surgically castrated sex offenders, whereas 58 noncastrated offenders were 10 times more likely to re-offend. A 7.4 percent recidivism rate was reported among 121 castrated sex offenders in Switzerland over five years compared with a 52 percent rate at the 10 year followup among men not undergoing the procedure. Yet another Danish study involving over 900 castrated sex offenders followed for periods of as long as 30 years reported a mere 2.2 percent recidivism rate.

Surgical castration, however, is neither necessary nor foolproof. Its effects can be reversed by taking testosterone. A better idea is so-called chemical castration. This involves no surgery—it consists of injections that lower testerone levels. Compliance with medications used to lower testosterone can readily be monitored because they can be given by means of periodic injections. This treatment recently made headlines. In Florida, a legislative attempt is being made to impose testosterone-lowering injections upon possibly unwilling repeat offenders.

There is precedent in this country for compelling persons to undergo medical procedures without choice. At one time, because of the danger of smallpox, everyone was required to be vaccinated so that they would not pose a danger to the community. Convicted felons lose certain rights (e.g., the right to bear arms). If it were clear that a community would definitely be safer with a sexual offender's testosterone lowered, then society would likely have a right to insist that he make himself safe.

Lowering testosterone is not a cure, a guarantee, or a panacea, but it might be far more palatable to a society in which many people are squeamish about mandating surgical castration. In conjunction with psychological counseling, most testosterone-lowering treatments are effective, especially when used to help individuals who want to change. In combination—chemical castration *and* counseling—we've seen encouragingly low rates of recidivism; one study found a 15 percent rate, a figure which is deceptively high because the study broadly defined re-offending to include non-sexual contact, like visits to schoolyards.

Today most people still consider sexual offenses, even the many that are nonviolent, to be more a question for the legal system than one in which science and medicine can play a useful role. But like it or not, it is a fact that over 90 percent of incarcerated sex offenders sooner or later will be free. If legislation and punishment alone cannot fully solve the problem, medicine and science need to be called into action. And if society can be made safer by such means, why not use them? Mr. McQuay, we should remember, will be among us again soon. □

The MONTANA STANDARD
Wednesday, January 29, 1997

Sex offender's relocation to town publicized

this Happens under present Law.
Isn't it time for a change?
Senator Jenkins

EXHIBIT 3
DATE 3/6/97
SB 31

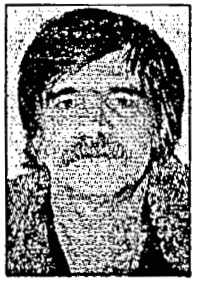
BY LORIE HUTSON
of The Montana Standard

Just after the one-year anniversary of the law that allows the state Department of Corrections to tell residents when a dangerous sex offender moves to town, corrections officials have released the name of a man who moved to Butte when he was discharged from prison Dec. 1.

Lawrence "Larry" Paul Povsha, 56, was convicted of deviate sexual conduct without consent in Bozeman and sentenced to 15 years in prison in 1987. He now lives in the 1600 building of Silver Bow Homes.

Because prison counselors determined that Povsha was a dangerous sex offender, and District Court Judge Ted Mizner in Deer Lodge approved their request to release the information, the Department of Corrections

See SEX OFFENDER / Back Page



Povsha

Name: "Larry" Paul Povsha
Age: 56
Race: Spanish/American
Height: 6 feet
Weight: 198 pounds
Description: Povsha has black, graying hair, hazel eyes and several tattoos. One tattoo on his upper right arm says "Larry and Luane" and he has another on his left forearm.

Sex offender ...

Continued from Page A1

can publicize Povsha's identity, background and whereabouts.

Bud Walsh, a probation and parole officer and supervisor in Butte, released information Friday and a photo was provided this week. He said he received the information last week.

Povsha also was convicted of rape in 1967, attempted rape in 1971, contributing to the sexual delinquency of children in 1974, indecent exposure in 1978, two counts of sexual assault in 1980 and sexual assault in 1986.

Walsh said Povsha is the second dangerous sex offender to move to the Butte area.

The first man, Robert G. Barnes, 58, was discharged from prison last May 1, but an arrest warrant was issued May 14 after he did not check in with probation officers.

Barnes was convicted of four counts of obscenity, two counts of indecent exposure and two counts of sexual assault in Custer County in 1991. The crimes involved two young girls. His whereabouts are still unknown.

Povsha received a full prison discharge on Dec. 1, which means that he doesn't have to check in with a probation officer or undergo counseling. But, in accordance with a 1989 law passed after a recently released sex offender murdered a 10-year-old Libby boy, Povsha must register for life with local authorities as a sex offender.

Detectives Capt. John Walsh said 46 people are registered with the Butte-Silver Bow County police department as sex offenders, including 45 men and one woman.

Corrections officials try to notify a community as soon as possible when a dangerous sex offender moves to town but the legal process takes some time, said Diana Leibinger-Koch, a lawyer with the Department of Corrections.

"The point is, (residents) are notified," she said Tuesday. Before the 1996 law went into effect, corrections officials were not required to tell communities about potentially dangerous offenders.

Now, Corrections Department lawyers can get a sworn affidavit indicating why a sex offender is considered dangerous from prison psychologist Sandy Hooton. After that ... tion for release of information is filed in the Powell County District Court. The offender is given a copy and then has a chance to challenge the petition in court.

Judge Mizner reviews the petition and decides if the release of information is necessary for the protection of the public. If so, he issues a court order.

The order is mailed back to the Department of Corrections in Helena and then sent from there to the community for release to the news media.

Leibinger-Koch said the process sometimes is delayed when the offender tells officials he doesn't know where he'll live when released from prison, or gives them an out-of-state address.

EXHIBIT 4
DATE 3/6/97
SB 31

PROTOCOL FOR THE TREATMENT OF SEX OFFENDERS WITH ANTI-ANDROGENS

April 2, 1993

Compounds which lower the levels of androgens, the male sex hormones, have been used for the treatment of male sex offenders since the 1960's (1). The two major members of this class, medroxyprogesterone acetate (MPA, Depo-Provera) and cyproterone acetate (CPA), have been in use in Europe for a number of years; CPA is not approved for prescription in the United States. MPA is approved by the FDA for use in the treatment of medical conditions such as precocious puberty, secondary amenorrhea, endometriosis, functional uterine bleeding, acromegaly, threatened or habitual abortion, and cancer of the breast, prostate, endometrium, or kidney; but not yet for the treatment of sex offenders (2). It is also used as a long-acting (3 months per injection) contraceptive in 70 countries outside the United States, and has recently been approved for such use by the FDA in this country. While private practitioners may use approved drugs for non-approved purposes, FDA rules can be interpreted to require FDA oversight over such use as part of an organized treatment program; under such circumstances, an investigational permit (IND number) from the FDA mat be required in order to establish such a program.

MPA has been used successfully in the treatment of transvestitism, pedophilia, incest, sodomy, fetishism, exhibitionism, and homosexuality (2-7). Although there is no good evidence which links testosterone levels in males to aberrant sexual or criminal behavior, available evidence suggests that the reduction of testosterone levels is causally related to reduction of both sexual and generalized aggressive behavior, while treatment with testosterone can stimulate sexual appetites and behavior (8). A number of possible mechanisms have been suggested to explain the effects of MPA, including a direct calming effect on the brain's limbic and hypothalamic arousal systems (10), direct suppression of the cerebral cortex (2), inhibition of the pituitary secretion of luteinizing hormone (10), inhibition of testosterone's action at central and peripheral receptor sites (2), direct effect on the gonads (11), and effects on testosterone metabolism (12). It has been demonstrated that successful treatment of sexual problems requires reductions of serum testosterone levels to less than 150 ng/100 ml (150 mg%) (13). Normal levels in adult males are in the range of 575 $\pm$ 150 ng/100 ml (14).

SIDE EFFECTS

Patients on therapeutic doses of MPA have reported side effects similar to those reported by women using progesterone drugs for contraception: fatigue, weight gain, increased sleep, depressive moods, gynecomastia (enlargement of the breasts), changes in patterns of body hair, decreased sebaceous gland secretion, inhibition of spermatogenesis, headaches, polydipsia, polyuria, and visual loss. Decrease in sexual arousal and in ability to achieve an erection normally accompany the treatment (12, 14); they are not considered significant medical side effects unless they totally prevent the achievement of erection and ejaculation. The significance of the decrease in the ability to achieve erection and ejaculation will be determined in part by the patient's subjective reaction - if the reduction is intolerable to the patient, it will be considered a significant side effect, and the dosage will be lowered or (if necessary) the trial will be discontinued. In studies in which patients have been on MPA for as long as eight years, all side effects have been reversible after cessation of treatment, although some, such as decreased spermatogenesis, may require up to a year to remit fully (1,6,9). There is some suggestion that long-term use of MPA may result in some forms of cancer; but too few male patients have been treated with MPA to date to be able to assess this risk adequately; and, to our knowledge, there are currently no confirmed cancer cases due to MPA which have been reported in the literature. The animal studies also involve animal models which are

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-401, enacted as sec. 7 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.
Limitation on deferral or suspension of sentence, 46-18-201.

EXHIBIT 5
DATE 3/6/97
SB 31

Part 5
Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.
Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against himself or another; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991.

Cross-References

Definition of "mentally defective", 45-2-101.
Definition of "mentally incapacitated", 45-2-101.
Definition of "physically helpless", 45-2-101.
Definition of "sexual contact", 45-2-101.
Definition of "sexual intercourse", 45-2-101.
Consent as a defense, 45-2-211.
Sexual intercourse without consent, 45-5-503.
Deviate sexual conduct, 45-5-505.
Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991; amd. Sec. 1, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and near end, after "more than", substituted "100" for "20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.
Victim less than 16 years old — extension of statute of limitations, 45-1-205.
Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "sexual contact", 45-2-101.
Sexual abuse of children, 45-5-625.

45-5-503. *(Temporary)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result

from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

45-5-503. *(Effective July 1, 1997)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in (2), near end, in (3)(a), near end, and in (3)(b), near end, inserted reference to 46-18-219.

Chapter 550 in (2), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "less than" substituted "4" for "2", and after "more than" substituted "100" for "40" and deleted second sentence that read: "An act "in the course of sent" includes an attempt to commit the offense or flight after the attempt or commission"; in (3)(b), near middle, substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "40"; inserted (5) defining in the course of committing sexual intercourse without consent; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-503, enacted as sec. 8 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $10,000.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 4, Ch. 687, L. 1991; amd. Sec. 3, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (2)(c), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "fined an amount not to exceed $10,000 or be imprisoned" and after "term of not" substituted "less than 5 years or more than 100 years and may be fined not more than $10,000" for "more than 5 years, or both"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 175, L. 1991; amd. Sec. 7, Ch. 687, L. 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "without consent", 45-5-501, 45-5-511.

Sexual abuse of children, 45-5-625.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985; amd. Sec. 1, Ch. 174, L. 1989; amd. Sec. 5, Ch. 687, L. 1991; amd. Sec. 4, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "exceed" substituted "100" for "20", and at end deleted "or both"; in (4), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "prison for" substituted "a term of not less than 4 years or more than 100" for "any term not to exceed 20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "cohabit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Part 6
Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306 and must serve the sentence for escape consecutively with the remainder of the original sentence.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981; amd. Sec. 9, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 372 at end deleted "as provided in 46-18-401"; and made minor changes in style. Amendment effective April 12, 1995.

EXHIBIT 6
DATE 3/6/97
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Part 5
Registration of Sexual and Violent Offenders

Part Cross-References

Definitions, 44-5-103.

Dissemination of public criminal justice information, 44-5-301.

Duties of Court and Department upon release of sexual offender, 46-18-254.

Employment restrictions — sexual offenders, 46-18-255.

46-23-501. Short title. Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual or Violent Offender Registration Act".

History: En. Sec. 1, Ch. 293, L. 1989; amd. Sec. 4, Ch. 407, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 407 after ""Sexual" inserted "or Violent".

46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-30 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal governme reasonably equivalent to a violation listed in subsection (4)(a).

History: En. Sec. 2, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 5, C 407, L. 1995; amd. Sec. 231, Ch. 546, L. 1995; amd. Secs. 7, 12, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 in (2), in two places, inserted "or violent"; in (3)(a) inserted reference to 45-5-504(2)(c) and after "-45-5-505" inserted parenthetical referring to deviate sexual conduct with an animal; and inserted definition of violent offense. The amendment in (3)(a) was rendered void pursuant to sec. 12, Ch. 550, L. 1995, a coordination section.

Chapter 546 in definition of Department substituted "department of corrections provided for in 2-15-2301" for "department of corrections and human services provided for in Title 2, chapter 15, part 23". Amendment effe tive July 1, 1995.

Chapter 550 in (3)(a), after "45-5-503 substituted "45-5-504(2)(c)" for "45-5-505".

Coordination: Section 12, Ch. 550, L. 199 provided: "If [this act] and House Bill No. 2 are both passed and approved, then the amen ment to 46-23-502(3)(a) in House Bill No. 2 is void." House Bill No. 214 was approved as C 407, L. 1995, on April 13, 1995. Although t amendment to 46-23-502(3)(a) in House Bi No. 214 is void, a similar amendment was mad by Ch. 550.

46-23-503. Release of sexual or violent offender from place o confinement — duties of official in charge. A sexual of violent offende who is released from the custody of the department of corrections must b informed in writing prior to release of the duty to register under 46-18-254 46-18-255, and this part by the official in charge of the place of confinement The official shall obtain the address at which the person expects to reside upo the person's release and report the address to the department of corrections The department shall inform the appropriate law enforcement agency havin local jurisdiction where the person expects to reside.

History: En. Sec. 4, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch 407, L. 1995; amd. Sec. 232, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 near beginning, after "sexual", inserted "or violent"; and made minor changes in style.

Chapter 546 in first sentence, after "department of corrections", deleted "and human services or the department of family services" and in second sentence substituted "depart ment of corrections" for "department of correc tions and human services"; and made mino changes in style. Amendment effective July 1 1995.

46-23-504. Persons required to register — procedure. (1) A sexua or violent offender shall, within 14 days of conviction or release from prison o within 14 days of entering a county of this state for the purpose of residing o setting up a temporary domicile for 14 days or more, register, as required unde 46-18-254, 46-18-255, and this part, with the chief of police of the municipalit or the sheriff of the county if the offender resides in an area other than municipality.

(2) At the time of registering, the person shall sign a statement in writin giving the information required by the department. The chief of police or sheri shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheri of the county where the person resides, if registration is with the chief of police.

from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

45-5-503. *(Effective July 1, 1997)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in (2), near end, in (3)(a), near end, and in (3)(b), near end, inserted reference to 46-18-219.

Chapter 550 in (2), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "20"; in (3)(a), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "less than" substituted "4" for "2", and after "more than" substituted "100" for "40" and deleted sentence that read: "An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission"; in (3)(b), near middle, substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "40"; inserted (5) defining in the course of committing sexual intercourse without consent; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995. provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-503, enacted as sec. 8 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $10,000.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 4, Ch. 687, L. 1991; amd. Sec. 3, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (2)(c), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "fined an amount not to exceed $10,000 or be imprisoned" and after "term of not" substituted "less than 5 years or more than 100 years and may be fined not more than $10,000" for "more than 1 years, or both"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(2)(b) that read: "(b) is 18 years of age or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense or be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and"; in (2)(a)(iii), after "service", inserted "if any is available" and after "course" inserted "if one is available"; inserted (2)(b) regarding the fine for second offense; in (2)(b)(i), after "license", substituted "suspended for not less than 60 days and not more than 120 days" for "confiscated by the court for not more than 90 days and be ordered not to drive during that period if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred"; in (2)(b)(ii), at end, inserted "if a community service program is available"; deleted (2)(b)(iv) that read: "(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii)"; inserted (2)(b)(iii) requiring payment of costs of participation in a substance abuse information course; inserted (2)(c) regarding fine and penalties for a third possession offense; inserted (3) establishing fine and penalties for possession by a person 18 years of age or older; in (4), in second sentence after "$50", inserted "if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed"; in (5) deleted former second sentence that read: "If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply" and in second sentence, after "proceedings for", deleted "violation of subsection (1) or for"; inserted (7) regarding reporting of a conviction or Youth Court adjudication"; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Unlawful purchase of alcoholic beverage, 16-3-301.

Penalty for violation of liquor code by underage person, 16-6-314.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-625. *(Temporary)* **Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.

45-5-625. *(Effective July 1, 1997)* **Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Rapists and Castration Revisited

PT 3/95
EXHIBIT Psychiatric Times 7
DATE 3/6/97
SB 31

by Domeena C. Renshaw, M.D.

The suggestion to castrate rapists as an alternative to imprisonment has periodically resurfaced since 1905. Now, a measure called the Child Protection Act (CS for SB 170) is making its way through the Florida state legislature, which the Committee on Criminal Justice, Sen. Robert Wexler (D-Boca Raton) and others have approved and forwarded on to the Senate Ways and Means Committee for discussion. The bill would impose chemical castration by injection of medroxyprogesterone (Depo-Provera) or its chemical equivalent on those convicted of sexual battery, and provides that "the court may sentence a defendant to undergo pharmacological treatment for a specific term of years, or for the life of the defendant" if the defendant is found to be "an appropriate candidate for pharmacological treatment."

That is in the spirit of the "three-strikes-and-you're-out" approach to crime. One report said one out of six, or 9,000 rapists, were held in Florida prisons.

Many misconceptions about rapists exist. There are tangled possible consequences of either surgical or chemical castration and some ethical questions. Some prevalent fallacies are outlined.

Fallacy 1: Rapists are a homogenous group. Actually, there are several categories of rapists. For example, some rapists attack only children or only elderly women; others, only men. Some are mentally retarded or psychotic; others are rape-murderers (serial killers) who predictably repeat the crime. Other types of rapists include: teen rapists; anger-impulsive/power/sadistic rapists; gang rapists; "true" rapists (sex only); and date rapists. Some use alcohol, drugs or both. The great majority of rapists who rarely are imprisoned because of nonreporting are men accused of date rape. These are everyday citizens who cross another's bodily boundaries for whatever reason. Due to shame, self-blame, the long legal battle, many women prefer to endure its effects in silence.

Fallacy 2: Surgical removal of the testes prevents rape and causes permanent impotence. In 1988 a study from Prague, Czechoslovakia, reported two rape-murders by a 21-year postcastration rapist. A 1981 study from West Germany reported that 11 out of 39 (28 percent) 46- to 59-year-olds were able to have erections adequate for intercourse after surgical castration. The adrenal gland may compensate with testosterone production. Remember that replacement testosterone injections can be obtained legally and on the street.

Fallacy 3: Surgeons would gladly do the castration. Judges may be surprised how highly inaccurate this statement is.

Fallacy 4: A man in prison can give consent for voluntary surgical/chemical castration. Actually, the incentive to leave prison clouds the validity of legal consent.

Fallacy 5: Chemical castration (injections of Depo-Provera every 10 to 14 days or lupron-gonadotropin, monthly) will be totally effective and easy to enforce since homing devices can trace the released rapist's whereabouts if he does not show up as scheduled. This is truly wishful thinking. Follow-up is expensive, labor-intensive and difficult. Who will monitor? The prison system is not ready to do out-of-prison follow-up. Social services are overburdened, comprising predominantly women workers who are fearful of contact with convicted rapists. Within a month or two of quitting medication, there will be a return to baseline testosterone for the rapist. Effectiveness of anti-testosterone as an "antirape" agent is still unsatisfactorily proven and controversial.

Fallacy 6: Rape is a "disease" analogous to tuberculosis. Rape is criminal behavior committed by a variety of men (very rarely by a woman). The question can be asked: Is castration treatment or punishment? If society sees it as a money-saving expedient to call rape a mental illness, thousands of various types of rapists will be evacuated from prisons. Where will they then line up for outpatient Depo-Provera or lupron shots?

Fallacy 7: There is definitive proof that lowered testosterone will eliminate the urge to rape. There is only controversy. Scandinavian and European studies are loosely quoted as reducing their rapist recidivism from 70 percent to 3 percent. However, the follow-up is six months only and the quoted studies (1970s) cluster rapists with others such as voyeurs and exhibitionists. There are as yet no convincing scientific studies.

Fallacy 8: Every convicted rapist is guilty. A few are not. Will they be castrated too?

In response to current media and legal efforts to promote rapist castration, physicians and psychiatrists, please stand back, think this issue through, debate it, educate our legislators and the public. Be aware there are already several petitions from imprisoned rapists volunteering for Depo-Provera or surgery to get out. Remember that rape killers kill again and again. We have as yet no scientific or ethical basis to climb onto this particular bandwagon.

Dr. Renshaw is director of the Loyola Sexual Dysfunction Clinic and professor and vice chairperson, department of psychiatry at Loyola Stritch School of Medicine. □

EXHIBIT 8
DATE 3/6/97
SB 31

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

March 6, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the ACLU of Montana. I acknowledge the concerns we all have concerning sex offenses. However well intentioned this bill, I stand in opposition to SB 31 for a number of reasons.

Section one allows first time offenders, in addition to their sentenced time, to be sentenced to chemical castration injections. Section two allows second time offenders the same enhanced sentences. In both sections "treatments must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary". Who determines this? Based on what criteria? For how long beyond release and at what cost?

In addition, "failure to continue treatment as ordered by the department constitutes a criminal contempt of court for failure to comply with the sentence for which the sentencing court shall impose a term of incarceration without the possibility of parole of not less than 10 years or more than 100 years."

Dealing with sex offenders is not easy, nor is it simplistic, either from a correctional standpoint or from a psychological or therapeutic standpoint. There are a number of complex factors at play- power, control, old patterns of thinking, that contribute to someone being a sexual offender. Castration, whether chemical or surgical, eliminates just one factor. It is a simple fix that offers no guarantee against re-offending.

It would seem to me that if this were a sound proposal from a therapeutic standpoint, that we would see the Montana Sex Offender Treatment Specialists up here in droves supporting this measure. I'd expect to see volumes of clinical support from the national organization of professionals in that field.

It also seems likelt to me that mandated castration, whether chemical or surgical, would in all probablitiy rise to the level of inflicting cruel and unusual punishment, a violation of the 8th Amendment of the U.S. Constitution, and other protected rights to privacy, maintaining bodily integrity and being fully informed about medical treatment.

The fiscal note should reflect the inflationary pressures such legislation will have on prison populations for years to come. I urge you to vote no on SB 31.

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/6/97

BILL NO. SB 31 SPONSOR(S) Sen. Jenkins

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
O	Cory Laird	Helena	Montana Catholic Con.
O	Scott Crichton		ACLU MT
Provide Info	Norma Jean Boles	Helena	Dept of Corr
Provide Information	Sandy Heaton	Deer Lodge MSP	" " "

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/6/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		~~✓~~ 9:15
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:10	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓ 1:30		✓

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 11, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Gerald Pease (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Diane Sands (D)

Members Absent: Rep. Brad Molnar (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 158, SB 160, SB 205, SB 163
POSTED 2/24/97

Executive Action:
SB 31 BE CONCURRED IN
SB 158 BE CONCURRED IN
SB 163 BE CONCURRED IN
SB 205 BE CONCURRED IN
SB 160 BE CONCURRED IN AS AMENDED

Informational Testimony:

GREG PETESCH, Code Commission
{Tape: 1; Side: A; Approx. Time Count: 20.1}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 21.2 - 24.2}

Closing by Sponsor: **SEN. BARTLETT**
{Tape: 1; Side: A; Approx. Time Count: 25.3}

EXECUTIVE ACTION ON SB 160

Motion: **REP. WYATT moved SB 160 BE CONCURRED IN.**
{Tape: 1; Side: A; Approx. Time Count: 25.8}

Motion/Vote: **REP. ANDERSON moved the amendments.** The motion carried 17 - 0.
{Tape: 1; Side: A; Approx. Time Count: 26.0; Comments: See Exhibit 3 for amendments.}

Motion/Vote: **REP. BOHARSKI moved SB 160 BE CONCURRED IN AS AMENDED.** The motion carried 17 - 0. **REP. SANDS will carry SB 160.**

EXECUTIVE ACTION ON SB 31

Motion: **REP. BOHARSKI moved SB 31 BE CONCURRED IN.**
{Tape: 1; Side: A; Approx. Time Count: 28.2}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 29.0}

Vote: The motion carried 17 - 0. **REP. KOTTEL will carry SB 31.**

HEARING ON SB 163

Opening Statement by Sponsor: **SEN. CHRIS CHRISTIAENS**
{Tape: 1; Side: A; Approx. Time Count: 31.0}

Proponents' Testimony:

BOB GILBERT, Montana Magistrates' Association
{Tape: 1; Side: A; Approx. Time Count: 34.6}

JOHN CONNOR, Department of Justice
{Tape: 1; Side: A; Approx. Time Count: 35.0}

JIM KEMBEL, City of Billings
{Tape: 1; Side: A; Approx. Time Count: 37.3}

MIKE MATHEW, Yellowstone County
{Tape: 1; Side: A; Approx. Time Count: 37.5}

HOUSE STANDING COMMITTEE REPORT

March 11, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 31** (third reading copy -- blue) **be concurred in.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Kottel

3-11-97

Committee Vote:
Yes 17, No 0.

531024SC.Hgd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/11/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	8:40 ✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	8:35 ✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	8:20 ✓		
REP. DUANE GRIMES	8:30 ✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR		✓	
REP. GERALD PEASE	✓		
REP. DIANE SANDS			✓
REP. LIZ SMITH	✓		~~✓~~
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MESSAGES FROM THE GOVERNOR

March 28, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Aklestad:

Please be informed that I have signed **Senate Bill 41** sponsored by Senator Benedict, **Senate Bill 92** sponsored by Senator Eck and **Senate Bill 108** sponsored by Senator Beck on March 28, 1997.

Sincerely,

MARC RACICOT
Governor

April 1, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Aklestad:

Please be informed that I have signed **Senate Bill 34** sponsored by Senator Nelson, **Senate Bill 42** sponsored by Senator Bishop, **Senate Bill 46 and Senate Bill 60** sponsored by Senator Sprague, **Senate Bill 54** sponsored by Senator Shea, **Senate Bill 68** sponsored by Senator Keating, **Senate Bill 109** sponsored by Senator Holden, and **Senate Bill 114** sponsored by Senator Waterman on April 1, 1997.

Sincerely,

MARC RACICOT
Governor

March 31, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

The Honorable John Mercer
Speaker of the House

State Capitol
Helena MT 59620

Dear President Aklestad and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return **Senate Bill 31, "AN ACT PROVIDING FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS; AND PROVIDING APPLICABILITY DATES."**

Senate Bill 31 provides for chemical treatment of certain sex offenders, the costs of which treatment would be paid for by the Department of Corrections.

Estimates of the fiscal impact of Senate Bill 31 as it has been amended, are $77,126 for fiscal year 1998 and $319,028 for fiscal year 1999. A revised fiscal note was not requested.

The operation of Senate Bill 31 would result in projected additional costs to the Department of Corrections budget of $77,126 for fiscal year 1998 and $319,028 for fiscal year 1999. Since there is no funding provided in the bill, I am returning Senate Bill 31 with a proposed amendment that it not become effective until funding is included in House Bill 2.

Senator Jenkins, the bill's sponsor, has been informed of the need for this amendment.

Sincerely,

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO
SENATE BILL NO. 31
(REFERENCE COPY)
March 31, 1997

1. Title, line 5
Strike: "AND"
Following: "DATES"
Insert; "; AND PROVIDING A CONTINGENT VOIDNESS PROVISION"

2. Page 2, line 10.
Insert: "NEW SECTION. **Section 4. Contingent voidness.** [This act] increases spending without providing corresponding funding. If a corresponding increase in funding for [this act] is not contained in House Bill No. 2, then [this act] is void."

March 31, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

Sincerely,

MARC RACICOT
Governor

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

April 18, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

Dear President Aklestad and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto Senate Bill 31, "**AN ACT PROVIDING FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS; AND PROVIDING APPLICABILITY DATES**" for the following reasons.

Senate Bill 31 provides for chemical treatment of certain sex offenders, the costs of which treatment would be paid for by the Department of Corrections.

On March 31, 1997, I returned the bill with a proposed amendment that would make the act void if funding was not provided in House Bill 2 to cover corresponding costs. The amendment was not adopted, leaving the Department of Corrections facing estimated costs amounting to $77,126 for fiscal year 1988 and $319,028 for fiscal year 1999.

The legislative and executive branches have worked very hard to provide sufficient funding for the Department of Corrections, an agency that has historically been underfunded. I cannot agree to add this unfunded responsibility to a department, the resources of which are strained to a filament.

Sincerely,

MARC RACICOT
Governor

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

April 18, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620